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Jeff S. Jordan, Assistant General Counsel
Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Mary Beth deBeau, Paralegal
999 E Street, NW
Washington, DC 20463

Re: MUR 7070

Dear Mr. Jordan,

This response is submitted by the undersigned counsel on behalf of Speaker Paul D. Ryan in connection with the complaint filed by American Democracy Legal Fund (the "Complainant") on or about May 19, 2016. (The American Democracy Legal Fund was described by *Politico* as an "overtly partisan watchdog group."¹)

As explained in more detail below, the allegations made in the Complaint are incorrect as matters of both fact and law, and the Complaint should be dismissed.

I. Background

The Complaint alleges that Speaker Ryan "hand-select[ed] and personally offer[ed] Mr. Mason Fink a leadership role with Congressional Leadership Fund," which in turn means that Speaker Ryan "is controlling an independent expenditure-only committee" in violation of 52 U.S.C. § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1)). Complaint at 1; *see also id.* at 4 ("Mr. Ryan is controlling the Fund by personally selecting and hiring one of its officers").

¹ Kenneth P. Vogel, *David Brock expands empire*, *Politico*, 8/13/2014, <http://www.politico.com/story/2014/08/david-brock-citizens-for-responsibility-and-ethics-in-washington-110003>.

Complainant's allegations are a combination of an assertion made in a *Politico* article published on April 27, 2016, that is attributed to an anonymous source,² Complainant's re-characterization of those assertions in a willfully untruthful manner,³ and pure speculation. A copy of the referenced *Politico* article is attached to this letter and should be included in the record. A reading of the actual article makes clear that the Complainant's allegations are entirely unsupported.

Specifically, *Politico* reported, "In recent weeks, Fink was personally approached by House Speaker Paul Ryan to take the job, according to one source briefed on the outreach."⁴ This is incorrect; Speaker Ryan did not "approach" Mr. Fink "to take the job." As explained in more detail below, Speaker Ryan called Mr. Fink after Mr. Fink had already accepted his new position, and left a message congratulating him.

Mr. Ryan did *not* personally approach Mr. Fink for the purpose of offering him a position with the Congressional Leadership Fund. Mr. Ryan did *not* make any determination on behalf of the Congressional Leadership Fund to offer Mr. Fink a position. *After* the Congressional Leadership Fund offered a position to Mr. Fink, *after* Mr. Fink accepted the position offered by the Congressional Leadership Fund, and *after* the Congressional Leadership Fund completed its own internal process of adding Mr. Fink to its Board of Directors, Mr. Ryan placed a telephone call to Mr. Fink and left Mr. Fink a message to congratulate him on accepting the position.

Contrary to the Complaint's assertions, the *Politico* article does *not* claim or even imply that Speaker Ryan "hand-selected" Mr. Fink for a position with Congressional Leadership Fund. That claim is solely attributable to the Complainant and is without any basis. There is similarly no basis for the Complainant's claims that Speaker Ryan has "the apparent 'authority' to hire employees of Congressional Leadership Fund" or that Speaker Ryan "formally offer[ed] a fundraising position ... to Mr. Mason Fink." Again, the anonymously-sourced *Politico* article reports *only* – incorrectly – that "Fink was personally approached by House Speaker Paul Ryan to take the job, according to one source briefed on the outreach." As explained above, "the outreach" consisted of a congratulatory telephone message.

Mr. Fink and Speaker Ryan have a relationship dating back a number of years pre-dating the Congressional Leadership Fund offering Mr. Fink a board position. The phone call was nothing more than a call from one friend to another to offer congratulations on accepting a new job.

² See Alex Isenstadt, *Congressional super PAC brings on Romney aide to defend House*, *Politico*, 4/27/2016, <http://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/04/congressional-super-pac-brings-on-romney-aide-to-defend-house-222511>.

³ Mr. Woodhouse likely violated 18 U.S.C. § 1001 by swearing to a complaint that contains obvious falsehoods.

⁴ Alex Isenstadt, *Congressional super PAC brings on Romney aide to defend House*, *Politico*, 4/27/2016, <http://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/04/congressional-super-pac-brings-on-romney-aide-to-defend-house-222511>.

II. Legal Analysis

A. The Complaint's Allegations Are Based on an Anonymous Source and the Complainant's Speculation

The Complaint should be dismissed because it is both procedurally defective and the actual facts described above clearly demonstrate that the Complainant's allegations are false and there is no reason to believe any violation of the law occurred.

As noted above, the basis of the Complaint is the anonymously-sourced claim that "Fink was personally approached by House Speaker Paul Ryan to take the job." The Complaint's more detailed assertions are pure speculation on the part of the Complainant, or outright false claims. *Politico's* report provides no support for either the Complainant's speculation or false statements, and no other source is cited.

In MUR 6002 (Freedom's Watch, Inc.), three Commissioners explained that allegations based on anonymous sources in media reports are not "specific facts from reliable sources," and expressed reluctance to "make a reason-to-believe finding based solely on information culled from sources whose credibility and accuracy are difficult to ascertain." MUR 6002 (Freedom's Watch, Inc.), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6; *see also* MUR 6661 (Murray Energy Corporation), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 7 ("First, an anonymous, unsworn, hearsay statement (reprinted in a news article or not) presents legal and practical problems for the Commission and respondents. The Act requires complaints to be sworn subject to penalty of perjury, and the Commission may not take any action, let alone conduct an investigation, solely on the basis of an anonymous complaint. Thus, allegations based upon unsworn news reports, anonymous sources, and an author's summary conclusions and paraphrases provide questionable legal basis to substantiate a reason to believe finding. Further, the Commission may not be able to readily locate an anonymous source to verify the accuracy of the person's statements, the context of the purported statements, or assess credibility."); MUR 6518 (Gingrich), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 6-7 ("As a threshold matter, we observe that unsworn news reports by authors who are not first-hand complainants or witnesses before the Commission present legal and practical problems for the Commission and respondents and, in any event, may be of limited probative value. The Act requires complaints be sworn subject to penalty of perjury. Because journalists often write quickly and their observations may be factually incorrect, complaints based upon an author's unsworn summary observations or paraphrases provide questionable legal and factual bases upon which to substantiate a reason to believe finding.").

The more specific claims made in the Complaint are unsourced, embellished and completely baseless, and should be dismissed as either false statements or (more charitably) "mere speculation." The Complainant embellished what was actually reported, and these embellished, baseless claims should be disregarded. Specifically, there is no basis for the Complainant's claim that Speaker Ryan "hand-select[ed] and personally offer[ed] Mr. Mason Fink a leadership role with Congressional Leadership Fund," which appears to have been

fabricated by the Complainant. Similarly, there is no basis for the claim that Speaker Ryan has "the apparent 'authority' to hire employees of Congressional Leadership Fund." Neither of these assertions is in any way supported by the anonymously-sourced claim in *Politico*.

In sum, the entirety of the Complaint's "factual" basis is either anonymously-sourced, speculative, or fabricated, and the Complaint must be dismissed for failing to present facts upon which "reason to believe" may be found. See MUR 4960 (Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 2 ("Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true."); *id.* at 3 ("purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred"); MUR 5467 (Moore), First General Counsel's Report at 6 ("the instant complaint presents nothing more than idle, unsupported speculation").

B. The Facts Demonstrate No Violation of the Act

If the Commission instead wishes to consider the merits of the Complaint, and tacitly accept the Complainant's continued abuse of the enforcement process, the facts set forth above conclusively demonstrate that Speaker Ryan has not violated 52 U.S.C. § 30125(e)(1).

The terms "establish, finance, maintain, or control" are not individually defined. Instead, Commission regulations define the phrase "*establish, finance, maintain, or control*" at 11 C.F.R. § 300.2(c), which sets forth ten factors to be "examined in the context of the overall relationship between sponsor and the entity."⁵ The ten factors listed in the regulation are not exclusive. See 11 C.F.R. § 300.2(c)(2) ("Such factors include, but are not limited to ..."). As noted in the Explanation and Justification, "[t]he phrase 'established, financed, maintained, or controlled,' without the modifier 'directly or indirectly,' was already used in the anti-proliferation provisions of the FECA and in the Commission's 'affiliation' regulation. See 52 U.S.C. 30116; 11 CFR 100.5(g), and 110.3." Final Rule on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,083 (July 29, 2002). In 2002, the Commission applied the same standard to "establish, finance, maintain, or control" as the phrase was used in 2 U.S.C. § 441i (now 52 U.S.C. § 30125). See *id.* at 49,084 ("The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA."). In other words, to ask if an entity is "established, financed, maintained, or controlled" by a federal officeholder or candidate is to ask if the two entities are affiliated. In the present matter, Speaker Ryan and the Congressional Leadership Fund are very obviously not "affiliated" with one another.

Factors 1, 2, and 3 at 11 C.F.R. §300.2(c)(2) address the term "control." Factors 4, 5, and 6 address "control" and "maintenance" through common and overlapping personnel. Factor 9 addresses the question of "establishment," while Factors 7, 8, and 10 address the question of "financing." The Complainant's allegations appear to be premised solely on Factor 3 – "[w]hether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the

⁵ A "sponsor" includes federal candidates and officeholders. 11 C.F.R. §300.2(c)(1).

entity." 11 C.F.R. § 300.2(c)(2)(iii). The Complaint does not allege that Speaker Ryan "established," "financed," or "maintained" the Congressional Leadership Fund, and there is no information in the record that would support such claims.

As demonstrated above, Speaker Ryan did not "hand-select[]" Mr. Fink for a position with the Congressional Leadership Fund, and Speaker Ryan did not "hire" Mr. Fink on behalf of the Congressional Leadership Fund, or "appoint" Mr. Fink to any position. In fact, Mr. Ryan never spoke with Mr. Fink prior to his acceptance of a position with the Congressional Leadership Fund. Rather, after the Congressional Leadership Fund placed Mr. Fink on its board, Mr. Ryan called Mr. Fink to congratulate him. Congratulating an individual after that individual accepts a job – an individual with whom one has a pre-existing relationship – does not even suggest the exercise of "authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity." 11 C.F.R. § 300.2(c)(2)(iii).

If Factor 3 is not satisfied, and the Complainant does not claim that any of the other factors set forth at 11 C.F.R. § 300.2(c)(2) are present, then it necessarily follows that none of the 10 factors are met, which, in turn, compels the conclusion that Speaker Ryan did not, and does not, directly or indirectly establish, finance, maintain, or control the Congressional Leadership Fund.

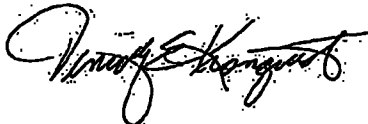
While not directly relevant to this matter because none of the ten factors are present, we note that even if the Complainant could establish the presence of one single factor, that would not be sufficient to find "reason to believe" that a "sponsor" directly or indirectly established, financed, maintained, or controlled an entity. The regulatory standard requires an examination of the "context of the overall relationship between sponsor and the entity," 11 C.F.R. § 300.2(c)(2), "such that the presence of any one or more factors alone may not bring a particular relationship within the prohibition." MUR 6753 (People for Pearce), First General Counsel's Report at 6. Thus, even if the Complainant's allegations regarding Factor 3 were true rather than completely fabricated, the Complaint still would not "set[] forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA." The presence of one factor cannot establish a violation because it is impossible to evaluate the "context of the overall relationship" with such limited information. The Complainant's failure to include information pertaining to any of the other nine factors should be read as an acknowledgment that no such evidence exists and none of the other factors are satisfied. Thus, even if the specific allegations made in the Complaint were proven true, there would still be insufficient evidence to find a violation of the Act.

The Complaint should be dismissed for any of the reasons set forth above. First, the Complaint is procedurally defective because it relies exclusively on an anonymously-sourced media report supplemented by the Complainant's own baseless speculation. Second, the actual facts conclusively demonstrate that Speaker Ryan did not hire Mr. Fink on behalf of the Congressional Leadership Fund, but, rather, he merely congratulated Mr. Fink on accepting a position offered by someone else after the Congressional Leadership Fund completed its own internal hiring process. Third, even if the Complainant's allegations were true, those allegations would be insufficient to support a reason to believe finding because the alleged violation requires

an examination of the "context of the overall relationship" and that "overall relationship" is completely neglected in the Complaint.

Upon review, please feel free to contact us if you have any questions or require any additional information.

Sincerely,



Tim Kronquist

Michael Bayes

Jason Torchinsky

Counsel to Speaker Paul D. Ryan

Enclosure

POLITICO

Grand Old Primary

POLITICO's coverage of the race for the Republican presidential nomination.

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Mason Fink was reportedly approached by House Speaker Paul Ryan to take the job. | John Shinkle

Congressional super PAC brings on Romney aide to defend House

By ALEX ISENSTADT | 04/27/16 06:00 AM EDT

A congressional Republican super PAC has tapped Mason Fink, former senior adviser to Mitt Romney, to help spearhead its fundraising efforts – a move that comes amid mounting concern within the GOP that a Donald Trump or Ted Cruz nomination would paralyze the party in down-ballot races.

Fink, who was Romney's 2008 and 2012 finance director and oversaw fundraising for the pro-Jeb Bush Right to Rise super PAC, will serve on the board of the Congressional Leadership Fund, a group devoted to protecting and expanding the House Republican majority.

While Republicans are favored to retain their majority, many of the party's top donors and operatives have grown worried that, with Trump or Cruz likely to lead the ticket, they will sustain losses. At last week's Republican National Committee spring meeting, some party strategists privately speculated that major contributors, turned off by the prospective nominees, would shift their attention to House and Senate races.

In recent weeks, Fink was personally approached by House Speaker Paul Ryan to take the job, according to one source briefed on the outreach. The two forged a friendship during the 2012 campaign, when Ryan served as Romney's vice presidential nominee.

Fink isn't the first Romney confidant to join the pro-House Republican campaign team. After being named speaker last year, Ryan tapped another former Romney aide, Spencer Zwick, to help guide his fundraising operation.



Limbaugh: Kasich acting 'testy' about his pact with Cruz

By NICK GASS

"Speaker Ryan got to know Mason very well during the 2012 campaign and thinks highly of him," Kevin Seifert, a Ryan spokesman, wrote in an email. "The Congressional Leadership Fund surely will benefit from his judgment and experience as they work to help defend and expand the House Republican majority."

Mike Shields, CLF's president, described Fink as "a very well-respected operative who understands the big picture of national politics. Investors know that when they join an effort with Mason it will be a financial success.

For now, the GOP-friendly group trails in fundraising. While Congressional Leadership Fund has \$1.9 million on hand, its Democratic counterpart, House Majority PAC, has over \$9 million.